

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

David Levi Whitehead #363127)
(full name) (Register No.))

12-4183-CV-C-NKL-P

Plaintiff(s).

Case No. _____

v.

Department of Corrections

George A. Lombardi

(Full name)

2729 Plaza Dr., P.O. Box 236

Jefferson City, Missouri 65102

Defendant(s).

Jury trial Demanded

Defendants are sued in their (check one):

☐ Individual Capacity

☐ Official Capacity

☒ Both

COMPLAINT UNDER THE CIVIL RIGHTS ACT OF 42 U.S.C. § 1983

I. Place of present confinement of plaintiff(s): Missouri Eastern Correctional Center
18701 Old Hwy 66 - Pacific, Missouri 63069

II. Parties to this civil action:
Please give your commitment name and any another name(s) you have used while incarcerated.

A. Plaintiff David Levi Whitehead Register No. 363107
Address 18701 Old Hwy 66
Pacific, Missouri 63069

B. Defendant George A. Lombardi
2729 Plaza Dr., P.O. Box 236 - Jefferson City, Missouri 65102
Is employed as Director of the Department of Corrections

For additional plaintiffs or defendants, provide above information in same format on a separate page.

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II. B.

Matt Sturm

2729 Plaza Dr., P.O. Box 236

Jefferson City, Missouri 65102

Deputy Division Director - Division of Adult Institutions

Alan Earls

P.O. Box 190

Fulton, Missouri 65251

FRDC Warden

Catherine Dusley

P.O. Box 190

Fulton, Missouri 65251

FRDC Assistant Warden

John Doe 1

P.O. Box 190

Fulton, Missouri 65251

FRDC Transport Sergeant

John Doe 2

P.O. Box 190

Fulton, Missouri 65251

FRDC Transport Officer 1

John Doe 3

P.O. Box 190

Fulton, Missouri 65251

FRDC Transport Officer 2

- III. Do your claims involve medical treatment? Yes X No _____
- IV. Do you request a jury trial? Yes X No _____
- V. Do you request money damages? Yes X No _____
- State the amount claimed? \$5 million / _____ (actual/punitive)

VI. Are the wrongs alleged in your complaint continuing to occur? Yes _____ No _____

VII. Grievance procedures:

A. Does your institution have an administrative or grievance procedure?

Yes X No _____

B. Have the claims in this case been presented through an administrative or grievance procedure within the institution?

Yes X No _____

C. If a grievance was filed, state the date your claims were presented, how they were presented, and the result of that procedure. (Attach a copy of the final result.)

June 9, 2011 and July 28, 2011. Presented as grievances. They said they done
Nothing wrong. Pages 2A and 2B

D. If you have not filed a grievance, state the reasons.

N/A

VIII. Previous civil actions:

A. Have you begun other cases in state or federal courts dealing with the same facts involved in this case?

Yes _____ No X

B. Have you begun other cases in state or federal courts relating to the conditions of or treatment while incarcerated?

Yes _____ No X

C. If your answer is "Yes," to either of the above questions, provide the following information for each case.

(1) Style: N/A
(Plaintiff) (Defendant)

(2) Date filed: N/A

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Fulton Reception Diagnostic Center

Warden's Response

Date: 6/30/11

Grievance# FRDC 11-45

Category: Harassment

Offender: Whitehead, David #363127

☐ Emergency Grievance ☒ Grievable Issue ☐ Non-Grievable

Response and Justification:

1) I am in receipt of your complaint dated 6/9/11. I understand your complaint to be: You state you were made to get up out of your wheelchair and board the transfer bus instead of being transported with a handicap van. You state this caused you pain, injury and humiliation. You wish to be compensated for the damages imposed on you.

Your complaint and pertinent information have been received and reviewed. When you originally arrived at FRDC you were not wheelchair bound. Dr. Garcia states he only authorized you a wheelchair while you were at FRDC due to the distance you would have to walk and the amount of time it would take you to go to your appointments and food service. The FRDC transportation supervisor states he ask you on each occasion when you were transported if you could board the bus without being transported by handicap van. On those occasion you responded you could board the bus on your own with minimal assistance which you were afforded. Your grievance is unsupported by these facts and therefore denied. If you disagree with these findings you may appeal.

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DIVISION OF ADULT INSTITUTIONS
FULTON RECEPTION & DIAGNOSTIC CENTER
APPEAL RESPONSE

TO: David Whitehead #363127

VS: FRDC

LOG #: FRDC-11-45

CATEGORY: 8-Other (Transfer)

DATE: 9-15-11


I am in receipt of your appeal dated 7-28-11 regarding your complaint about being transported in a non-handicapped van. You state you could walk with your braces when you arrived at FRDC. Your braces were taken away and medical issued you a wheelchair as you cannot walk without them. You contend you were transported on 5-12-11 (for a court out count) and again on 5-26-11 (when transferred to MECC) in a non-handicapped van. You claim you were forced to hop on and off the bus both times causing you extreme pain and further damage to your legs, knees, and ankles. You state this is cruel and unusual punishment. You request 5 million dollars, the staff involved dismissed from employment, and all transportation officers trained in the transportation of handicapped offenders.

Your complaint and pertinent information have been reviewed. Medical staff was contacted and states you are able to walk short distances and was only provided a wheelchair to facilitate your movement to various areas of the institution due to distances and the amount of time it would take you if you walked. Medical staff also state there is no medical reason you cannot get on and off the bus. The transportation supervisor states you indicated you could board the bus and did so with minimal assistance. There is no evidence to support your complaint. Per D5-3.2, Offender Grievance, punitive or consequential damages will not be provided.

Appeal denied

8-11-11
DATE
RECEIVED

9-15-11
DATE
REVIEWED


MATT STURM
DEPUTY DIVISION DIRECTOR
DIVISION OF ADULT INSTITUTIONS

MS:bl

OFFENDER COPY

- (3) Court where filed: N/A
- (4) Case Number and citation: N/A
- (5) Basic claim made: N/A
- (6) Date of disposition: N/A
- (7) Disposition: N/A
(Pending) (on appeal) (resolved)
- (8) If resolved, state whether for: N/A
(Plaintiff or Defendant)

For additional cases, provide the above information in the same format on a separate page.

IX. Statement of claim:

- A. State here as briefly as possible the facts of your claim. Describe how each named defendant is involved. Include the names of other persons involved, dates and places. Describe specifically the injuries incurred. Do not give legal arguments or cite cases or statutes. You may do that in Item "B" below. If you allege related claims, number and set forth each claim in a separate paragraph. Use as much space as you need to state the facts. Attach extra sheets, if necessary. Unrelated separate claims should be raised in a separate civil action.

On 5/12/11 I was called to transfer at FRDC for a court out-count. The officers there saw that I was in a wheelchair. They put my arm and leg restraints on me and after everybody had their restraints on we all went to the bus. The officers made me get out of my wheelchair and hop up on the bus. On 5/19/11 I went through the same thing with the same officers. On 5/26/11 I was called back to transfer at FRDC to transfer to MECC and I went through the same thing with the same officers. But every time I was transferred around the area who picked me up at Central transport brought handicap vans. They knew I was in a wheelchair.

- B. State briefly your legal theory or cite appropriate authority:

Something needs to be done about the officers just doing things the way they feel like it, when they know it has to be done the right way when it comes to transporting handicap people in wheelchairs.

X. Relief: State briefly exactly what you want the court to do for you. Make no legal arguments.
Enforce the way handicap people are transported. Pay for my pain and suffering and humiliation.

XI. Counsel:

A. If someone other than a lawyer is assisting you in preparing this case, state the person's name. N/A

B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action? Yes X No

If your answer is "Yes," state the names(s) and address(es) of each lawyer contacted.

Roger G. Brown & Associates
216 East McCarty Street
Jefferson City, Missouri 65101-3313

C. Have you previously had a lawyer representing you in a civil action in this court? Yes No X

If your answer is "Yes," state the name and address of the lawyer.

N/A

I declare under penalty of perjury that the foregoing is true and correct.

Executed (signed) this 27 day of June 2012

David Whithers
Signature(s) of Plaintiff(s)

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XI. B.

William D. Steinmeier; P.C.
2031 Tower Drive
Jefferson, City, Missouri 65109

Michael Rizzo Law office
P.O. Box 165317
North Kansas City, MO 64116-5317

Katherine S. Rizzo (Stinson M.H.) Law office
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Kansas City, MO 64106

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210 Plaza West Building, 4600 Madison Ave
Kansas City, MO 64112-3012

ACLU
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Kansas City, MO 64111

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Kansas City, MO 64131-3405

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Columbia, MO 65201-3525

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Columbia, MO 65201

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Lexington, MO 64067

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Kansas City, MO 64108-1971

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Independence, MO 64050-3715

Bartimus, Frickleton, Robertson & Gornly, P.C. Law Office
715 Swifts Highway
Jefferson City, MO 65109-2545

Brown, Cornell, Farrow, C.L.C. Law office
601 Monroe Street, Suite 304
Jefferson City, MO 65101-3180

David Whitehead #363197
Missouri Correctional Center 1-A-10

Eastern

18701 Old Hwy 66
Pacific, MO 63069

This correspondence is from an inmate in the custody of the Missouri Department of Corrections. The Department is not responsible for the contents of this correspondence. For information about the Department or to verify information about the offender, please visit our website at www.doc.mo.gov.

Mailed from:
Missouri Eastern
Correctional Center

RECEIVED

2012 JUL -2 PM 1:29
CLERK, U.S. DIST. COURT
WEST. DIST. OF MO
KANSAS CITY, MO

"LEGAL MAIL"

U.S. District Court
Office of the Clerk
1510 Whitaker Courthouse
400 E. Ninth Street
Kansas City, MO 64106

